

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF  
PUBLIC SAFETY,

Petitioner,

vs.

MICHAEL R. DIXON, JR.,

Respondent.

No. 14-1235 PO

**DECISION**

Michael R. Dixon, Jr. is subject to discipline because he a committed criminal offense involving moral turpitude while on active duty.

**Procedure**

The Director of the Department of Public Safety (“the Director”) filed a complaint on July 23, 2014, seeking this Commission’s determination that Dixon’s peace officer license is subject to discipline. Dixon was served by certified mail with a copy of the complaint and our notice of complaint/notice of hearing on August 4, 2014.

On September 18, 2014, the Director filed a motion for sanctions and/or summary decision (“the motion”). We allowed Dixon until October 2, 2014 to respond to the motion. The basis for sanctions, according to the motion, was the failure of Dixon to file an answer to the complaint. Dixon filed his response to the motion, his answer, and a motion for leave to file the

answer out of time on September 30, 2014. Although it appears he served an answer on the Director on September 11, 2014, it was not received by this Commission until September 30, 2014. We granted the motion to file it out of time and deemed it filed September 30.

Pursuant to 1 CSR 15-3.446(6)(A),<sup>1</sup> we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely disputes such facts. Those facts may be established by stipulation, pleading or discovery response of the adverse party, affidavit, or other evidence admissible under the law.<sup>2</sup> Furthermore, a party cannot rely solely on its own pleading to establish or raise a genuine issue as to any fact.<sup>3</sup> As the non-moving party, Dixon had the burden to raise a genuine issue as to any of the essential facts that would entitle the Director to a favorable decision.

In support of the motion for summary decision, the Director included an affidavit of his custodian of records verifying Dixon's licensure status as Exhibit 1. He also provided 11 pages of certified records of the Circuit Court of St. Louis County as Exhibit 2. Within those records is the probable cause statement and affidavit of Sergeant Robert Vaughn of the Missouri State Highway Patrol, describing the facts as he found them during his investigation of the crimes with which Dixon was initially charged. In response to the motion, Dixon did not raise any issues of fact related to the charges and the underlying conduct giving rise to them.

The following facts, based on the Director's admissible evidence, are undisputed.

### **Findings of Fact**

1. Dixon was a licensed peace officer at all relevant times. His license is still current and active.

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<sup>1</sup> All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> 1 CSR 15-3.446(6)(B).

<sup>3</sup> *Id.*

2. On July 1, 2014, Dixon pled guilty to the criminal offense of harassment<sup>4</sup> and was given a suspended imposition of sentence (SIS) and placed on two years' supervised probation.

3. Dixon's plea of guilty admits the facts underlying the harassment charge as follows: "between October 1, 2012 and June 26, 2013 [Dixon], for the purpose of disturbing C.M. made repeated telephone calls to C.M., as well as repeated comments of a suggestive or sexual nature and touching or striking her genital area with a flashlight."

4. Pursuant to the written terms of the guilty plea, Dixon is prohibited from denying or retracting the admissions he made in the case publicly, privately, or in any online post and must complete a program of sexual harassment training or counseling as directed by his probation officer.

5. At the time Dixon touched or struck C.M.'s genital area with the flashlight, he was the Sheriff of Osage County.

6. Before he was Sheriff of Osage County, Dixon was the Police Chief in Belle, Missouri.

7. A few minutes before midnight on June 24, 2013, Dixon was hosting a social gathering at his home in Belle when the Osage County Emergency Operations Center reported that there was a fight in progress at a business inside the territorial limits of Osage County.

8. Dixon, one of his deputies, and Belle officer C.M. responded to the report in Dixon's patrol car.

9. At some point after the three officers arrived on the scene, Dixon used his flashlight to touch or strike C.M. in her genital area.

10. Before the night of the incident involving Dixon's flashlight, he had made unsolicited comments to C.M. that were sexual and suggestive in nature.

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<sup>4</sup> Section 565.090. Statutory references are to RSMo. Supp. 2013 unless otherwise noted.

11. On June 26, 2013, Dixon went to C.M.'s residence, which she shared with her fiancé, and attempted to contact C.M. there in person and on her cell phone. When these attempts were unsuccessful, Dixon contacted the Osage County Emergency Operations Center and requested that dispatchers contact C.M. to tell her to return Dixon's call.

12. C.M. was so distressed by these unwanted communications that she hid from Dixon for several hours and, when she returned home, drew her weapon to clear her own residence for fear that Dixon could be hiding there.

### **Conclusions of Law**

We have jurisdiction to hear this case.<sup>5</sup> The Director has the burden of proving that Dixon has committed an act for which the law allows discipline.<sup>6</sup> The Director alleges there is cause for discipline under § 590.080.1(2) and (3):

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

### **Criminal Offenses – Subdivision (2)**

Although charged with multiple crimes related to his behavior directed at C.M.,<sup>7</sup> Dixon's multiple charges were disposed of on the basis of an agreement whereby the trial court accepted his plea of guilty to the crime of harassment, Class A misdemeanor and criminal offense.<sup>8</sup>

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<sup>5</sup>Section 590.080.2.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

<sup>7</sup> According to the certified copy of the Information, Dixon was charged with felony tampering with a motor vehicle (569.080.1), misdemeanor sexual misconduct (566.090), third degree assault (565.070), and misdemeanor stalking (565.225.2) in addition to harassment.

<sup>8</sup> Section 556.016, RSMo 2000.

However, the imposition of sentence for the crime was suspended and Dixon was placed on two years' supervised probation. The Court accepted the plea of guilty on July 1, 2014. If Dixon successfully completes his term of probation, he will avoid final judgment. However, in the event Dixon has not complied with any of the material terms and conditions of his probation, the Court has retained the jurisdiction and authority to impose a sentence and render a final judgment in accordance with the plea arrangement. Dixon asserts he denied "any wrongdoing in association with the facts underlying the plea arrangement" in the answer he has filed to the Director's complaint. However the guilty plea filed with the Court states Dixon pled guilty to harassment, "...for the purpose of disturbing C.M. made repeated phone calls to C.M., as well as repeated comments of a suggestive or sexual nature and touching or striking her genital area with a flashlight."<sup>9</sup>

In his answer, Dixon correctly points out that without the imposition of a sentence, the guilty plea alone is not sufficient to collaterally estop Dixon from arguing that he did not commit the criminal offense to which he made the plea.<sup>10</sup> But the Director has moved for a summary decision, and 1 CSR 15-3.446(6)(B) provides that the non-moving party shall not rely solely on its pleading, but must make an affirmative response to show us there is a genuine issue as to some fact that would preclude the entry of a decision in the Director's favor. Dixon has not met that threshold requirement for an effective response. He has provided no evidence to contradict the Director's evidence regarding his criminal behavior.

The documents provided by the Director show Dixon pled guilty to the crime of harassment in violation of § 565.090 which provides:

1. A person commits the crime of harassment if he or she:

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<sup>9</sup> Motion Ex. 2.

<sup>10</sup> *Director, Dept. of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App. W.D. 2009).

(1) Knowingly communicates a threat to commit any felony to another person and in so doing frightens, intimidates, or causes emotional distress to such other person; or

(2) When communicating with another person, knowingly uses coarse language offensive to one of average sensibility and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or

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(5) Knowingly makes repeated unwanted communication to another person; or

(6) Without good cause engages in any other conduct with the purpose to frighten, intimidate, or cause emotional distress to another person, cause such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person.

## 2. Harassment is a class A misdemeanor.

These documents also contain sufficient uncontroverted facts to establish that Dixon engaged in a pattern of behavior directed at C.M. that caused her fear, intimidation and emotional distress.

We believe C.M. responded as a person of average sensibilities. In fact, given that C.M. is also a law enforcement officer, we suspect she is less susceptible to fear, distress, and intimidation than the average person, yet her response to Dixon's unwelcome attempts to contact her clearly caused her to react in a manner demonstrating that she feared him. We have sufficient evidence before us that Dixon committed the criminal offense of harassment; therefore, the Director has shown cause for discipline under § 590.080.1(2).

### Active Duty and Moral Turpitude– Subdivision (3)

Dixon's unwelcome and offensive touching of C.M.'s genital area with a flashlight occurred as C.M., Dixon, and one of his deputies were responding to a call put out by the Osage County Emergency Operations Center regarding a fight in progress at an Osage County business.

The three officers responded in Dixon's patrol vehicle. It was in the course of that police response that C.M was the victim of Dixon's criminal offense. We therefore find that Dixon was operating as a peace officer, and thus on active duty, as he was committing the crime.

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."<sup>11]</sup>

In *Brehe v. Missouri Dep't of Elementary and Secondary Education*,<sup>12</sup> a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:<sup>13</sup>

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and
- (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved.<sup>14</sup> Even if harassment is not necessarily a Category 1 crime in all circumstances, it is certainly a Category 3 crime, and under the facts in this case, it involves moral turpitude. Dixon's criminal conduct of touching or striking a female police officer in the genital area while both were on active duty is

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<sup>11</sup> *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

<sup>12</sup> 213 S.W.3d 720 (Mo. App. W.D. 2007).

<sup>13</sup> *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

<sup>14</sup> *Brehe*, 213 S.W.3d at 725.

an act of baseness, vileness, and depravity in the private and social duties that fellow law enforcement officials owe each other. It is contrary to modesty and good morals and constitutes moral turpitude. Consequently, there is cause for discipline under § 590.080.1(3).

**Summary**

Dixon is subject to discipline under § 590.080.1(2) and (3). We grant the Director's motion for summary decision and cancel the hearing.

SO ORDERED on October 21, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner